

VZCZCXYZ0000  
OO RUEHWEB

DE RUEHVJ #0041/01 0100955  
ZNY CCCCC ZZH  
O 100955Z JAN 07  
FM AMEMBASSY SARAJEVO  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5181  
INFO RUEHRL/AMEMBASSY BERLIN 0040  
RUEHLO/AMEMBASSY LONDON 0060  
RUEHFR/AMEMBASSY PARIS 0056  
RUEHRO/AMEMBASSY ROME 0095  
RUEHVB/AMEMBASSY ZAGREB 0281  
RUEAIIA/CIA WASHDC  
RHEFDIA/DIA WASHINGTON DC  
RUEKJCS/SECDEF WASHDC  
RUEKJCS/JCS WASHINGTON DC  
RHEHNSC/NSC WASHDC  
RUEHBS/USEU BRUSSELS  
RUFOAOA/USNIC SARAJEVO

C O N F I D E N T I A L SARAJEVO 000041

SIPDIS

SIPDIS

DEPARTMENT FOR EU (DICARLO), EUR/SCE (HOH/FOOKS), P (BAME);  
NSC FOR BRAUN

E.O. 12958: DECL: 01/01/2015

TAGS: [PGOV](#) [PREL](#) [PINR](#) [BK](#) [EU](#)

SUBJECT: BOSNIA - THE HIGHREP'S PROPOSAL FOR PHASE II  
CONSTITUTIONAL REFORM

Classified By: Charge Judith Cefkin. Reason 1.4(b) and (d).

¶1. (C) SUMMARY: The High Representative (High Rep) shared with us his draft proposal for conducting phase II of constitutional reform (A copy of the 21-page paper was e-mailed to EUR/SCE) and asked for official U.S. comments on it. The HighRep proposes establishing a Commission on Constitutional Reform composed of Bosnian political figures supported by secretariat of international community and Bosnian experts. The paper contains some good ideas and is correct in its core conclusion that without constitutional reform Bosnia will not be a stable and functional state, but there are several problems with the HighRep's proposal. It fails to appreciate that the locus of political power and decision-making on controversial issues such as constitutional reform rests with political leaders. It overstates the potential benefits of a large role for civil society in constitutional reform and underestimates the potential pitfalls. The elaborate phase II institutional architecture outlined in the paper seems to favor an EU-driven project rather than the preferable U.S.-EU partnership. A proposal to make phase II reform a condition of EU membership gives us cause for concern. Finally, the HighRep's paper favors rapid establishment of phase II architecture despite our repeated warnings that the U.S. does not, since premature action could undercut the prospects for passage of the U.S.-brokered packaged of amendments. We welcome Washington's thoughts on the paper as we continue our staff level discussions on constitutional reform. END SUMMARY

The HighRep's Core Constitutional Reform Structure  
-----

¶2. (C) The HighRep paper proposes Bosnia's Parliamentary Assembly provide a mandate for phase II of constitutional reform as a means of legitimizing the process and giving the project local ownership. At the same time, the paper acknowledges Bosnia's parliament is not capable of managing constitutional reform process itself (Comment: We agree.) and proposes parliament establish two bodies to do so: 1) a political decision making body, and, 2) an expert/administrative body. Both would be housed in

parliament (rather than at the OSCE or some other international institution as was the case with defense reform).

-- Political Decision Making Body - Option 1: The paper's preferred option, this calls for creation of a "Commission on Constitutional Reform" consisting of representatives from political parties, who would negotiate and make decisions on specific constitutional changes. This approach ignores a key lesson learned from the U.S.-brokered process, however. Party leaders do not devolve genuine decision-making authority to representatives. Without sustained involvement from party leaders, agreement is unlikely.

-- Political Decision Making Body - Option 2: This involves calling a full-fledged constitutional convention. The paper describes how a convention might work, but rejects the idea as creating too many "additional challenges."

-- Expert/Administrative Body: This would be a "Secretariat" consisting of approximately 45 international and Bosnian staff. The paper envisions the Secretariat driving the constitutional reform process by producing papers and proposals for the Commission as well as answering and addressing counter proposals that emerge during discussions. The proposal to create a secretariat makes sense, but its composition, leadership and relationship to the political body would be critical. A defense reform model might work, but our initial assessment is that the HighRep's proposed constitutional reform secretariat more closely resembles the failed experiment with the Police Reform Directorate than the OSCE-house Defense Reform Commission.

#### Engaging Civil Society

-----

13. (C) The HighRep as well as many others believe that the U.S.-brokered process failed to adequately engage civil society and the wider Bosnian public. To correct for this perceived deficiency, the HighRep proposes establishing a "Consultative Forum" and "Council for Review and Consultation," which would provide for a for civil society and the public to feed comments, ideas and proposals to the Constitutional Commission. We believe Haris Silajdzic's political opportunism, allied with a misinformation campaign led by Bosnia's leading daily, Dnevni Avaz, had more to do with the April defeat of the U.S.-brokered package than the absence of NGO input during the negotiation process.

14. (C) Nonetheless, we support the objective of engaging civil society as a means of enhancing the legitimacy of and buy-in to the constitutional reform process. The key issue is how to do so. Here the paper simultaneously fails to adequately address the potential pitfalls of NGO involvement in the process as well as overestimates civil society's capacity to shape political leaders' bottom lines. Without careful management, NGOs, think tanks, and other pressure groups could turn phase II reform into a vehicle for their pet causes and weigh down a resulting package of amendments with extraneous and/or unworkable provisions. They might also be reluctant to embrace compromises necessary to conclude a deal, as is often the case with single-issue advocacy groups. Finally, as we noted earlier, political leaders are the key to reaching a deal on constitutional reform. As long as Bosnian civil society is institutionally weak and lacks meaningful political power, it would be unrealistic to expect it to drive political leaders' calculus. Therefore, the mechanisms involving civil society need to be retooled.

#### From Working Together to an EU(SR) Lead

-----

15. (C) The December PIC "welcomed the commitment by the European Union and the United States to work together to support further constitutional reform." The implication of the language is a partnership, but the HighRep's paper

appears to shift the balance of power and authority subtly towards the EU, specifically the EU Special Representative. For example, rather than have a European and American co-chair the Secretariat, the paper proposes naming an EUSR Special Envoy as Chair with an American as Deputy. The EUSR Envoy is tasked with reporting, "through the EUSR," to the international community on the constitutional reform process.

The paper also references an EUSR "Council of Advisors" on constitutional reform that would work directly for the EUSR, but occasionally interject themselves into (and, we foresee, potentially undercut) the Secretariat's work. Taken collectively, these elements suggest U.S. support for an EUSR project rather than the joint U.S.-EU project implied in the December PIC statement.

#### Rush to Phase II

16. (C) The HighRep's paper assumes parliament is unlikely to adopt the package of constitutional amendments agreed to by six political parties in March. This judgment is inconsistent with an internal OHR analysis which concluded that, as of December 30, 2006, the U.S.-brokered packaged could command anywhere from 28 to 32 votes in the House of Representatives. A January 5 statement by the Social Democratic Party leader Zlatko Lagumdžija that his party may oppose the package, if more than post-government formation political jockeying, would undercut OHR's end of year optimistic assessment, however. Regardless, the HighRep's proposal marries a premature judgment about the U.S.-brokered package's prospects to a claim that "momentum" is crucial to the constitutional reform process in order to justify pressing for moving quickly to establish the phase II secretariat (i.e., The paper suggests agreement by the U.S.,

#### SIPDIS

EU, and HighRep in January on a phase II process and possible parliamentary passage of a law creating phase II institutions in February.). The paper ignores the risk that early establishment of phase II institutions provides wavering MPs with a ready excuse to jettison the U.S.-brokered package.

#### EU Conditionality and Constitutional Reform

17. (C) The HighRep's paper proposes making constitutional reform a condition for Bosnia's EU membership, though it concedes the EU may balk at this proposal. Ultimately a decision on conditionality rests with Brussels, but we have our doubts about its advisability. Pressure on Brussels by Schwarz-Schilling's predecessor produced lukewarm EU conditionality on police reform. The result has been a watered down police reform proposal and a delay in the conclusion of an EU Stabilization and Association Agreement (SAA) with Bosnia. The EU's approach to its own conditionality also complicated U.S. efforts to support the police reform process, since the U.S. was unable to press Bosnian political leaders more forcefully on an EU requirement than the EU itself. If the EU accepted the HighRep's proposal on conditionality, we would recommend working behind the scenes to shape how it is defined. Bosniak member of the Tri-Presidency Haris Silajdzic has told us that he expects the EU to make elimination of entity voting a condition for EU membership. Given the HighRep's regular exchanges with Silajdzic, it would not surprise us if Silajdzic's suggestion lay behind the paper's EU conditionality proposal. Regardless, such a condition would make negotiating a phase II reform package all but impossible.

#### Comment

18. (C) The HighRep, eager to launch phase II, is likely to press for formal U.S. agreement to his proposal this month. We should continue to resist his entreaties even as we continue staff level talks on phase II. With this in mind,

we would welcome Washington's views on the HighRep's paper. Since October the HighRep has been more concerned with "reassuring" SBiH's and HDZ-1990's anti-constitutional reform leadership that phase II will happen rather than with shoring up support for the phase I package of amendments. We need to continue to impress upon him that unless phase I amendments are adopted, the ambitious reform program outlined in his paper is unlikely to be realized. Keeping Schwarz-Schilling on message and inside the phase I box will not be easy. One European diplomat told us recently that Schwarz-Schilling's constitutional reform proposals, particularly his eagerness to lock in an EUSR-led process sooner rather than later, is part of a larger effort by Schwarz-Schilling to secure his future beyond June 2007. We believe there is a lot of truth to this observation, and this will only make managing him more difficult. Finally, it is worth noting that the European diplomat's comments Schwarz-Schilling's proposals and Silajdzic's January 9 call for establishment of a Constitutional Reform Commission within parliament supported by a secretariat suggest the HighRep's paper has a wider distribution than he admitted to us.

CEFKIN